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Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re MPHASE Technologies, Inc.

Serial No. 75/510,925

Janik Marcovici of Perman & Green, LLP for MPHASE Technologies, Inc.

Mark Sparacino, Trademark Examining Attorney, Law Office 103 (Dan Vavonese, Acting Managing Attorney).

Before Cissel, Hohein and Drost, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

MPHASE Technologies, Inc. has filed an application to register the term "INTELLIGENT NETWORK INTERFACE" for "electronic components; namely audio and video transmitters and receivers, electronic circuit boards and microwave circuit

boards, all used in communication systems that provide digital subscriber lines."[1]

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's goods, the term "INTELLIGENT NETWORK INTERFACE" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is

[1] Ser. No. 75/510,925, filed on June 30, 1998, which is based on an allegation of a bona fide intention to use such term in commerce. The

merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant, in its response to the initial Office Action, has conceded that "transmitters, receivers, electronic and microwave components and systems for use in communications systems in providing digital subscriber lines have some processing capability, wherein an electronic signal having an initial form is processed into another form" and that such goods "do indeed interface with ... communications systems." However, relying upon various dictionary definitions,[2] applicant argues

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words "NETWORK INTERFACE" are disclaimed.

[2] Although, in response to the initial Office Action, applicant made of record definitions of "transmitter" and "receiver" from The Illustrated Dictionary of Electronics (7th ed. 1997), it did not submit definitions from such dictionary of "intelligence" and "network interface unit" until it filed its appeal brief. While submission of the latter is untimely under Trademark Rule 2.142(d), we nevertheless have considered such evidence inasmuch as it is settled that the Board

that "[t]he phrase INTELLIGENT NETWORK INTERFACE is not synonymous with" its goods "nor does it stand for the function or effect of processing signals with transmitters, receivers, and microwave boards in communication systems for providing digital subscriber lines." Specifically, applicant notes that:

> The Illustrated Dictionary of Electronics, 7th Ed., 679 (1997), ... defines "transmitters" [in the singular] as equipment for producing and sending signals or data. Also, a "receiver" is defined as a device or system operated at the destination end of a communications link[; it accepts a signal and processes or converts it for local use]. Id. at 575-76 .... By comparison, "intelligence" is defined as meaningful data that modulates a carrier [(e.g., the voice or music in a frequency-modulated (FM) radio signal, or the image in a television signal)], Id. at 365 ..., and "network interface unit", is defined as a device provided to each subscriber that connects telephones, television sets, and personal computers to an electrical or fiberoptic cable, Id. at 465 .... In the context of communication systems for providing digital subscriber lines, the word INTELLIGENT does not stand for the processing performed by transmitters, receivers, electronic boards and microwave boards used for providing digital subscriber lines even if the transmitters and receivers use microprocessors to perform the function.

In addition, applicant points out that "the phrase INTELLIGENT NETWORK INTERFACE is not defined in the dictionary"

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may properly take judicially notice of dictionary definitions. See, e.g., Hancock v. American Steel & Wire Co. of New Jersey, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc., 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

and asserts that "a person reading the phrase ... [would not] think of it as being transmitters, receivers, electronic boards and microwave boards used for providing digital subscriber lines." As to the "NEXIS" evidence (discussed hereinafter) on which the Examining Attorney relies, applicant contends that such "shows that the phrase may indeed mean several different things including television set top boxes which provide an interface/connection point between TV and cable." Applicant, in light thereof, asserts that:

> Although ... the fact that a term or phrase is not found in the dictionary is not controlling on the question of registrability when the phrase has a well understood and recognized meaning, in this case, [as shown by the "NEXIS" evidence,] the phrase INTELLIGENT NETWORK INTERFACE does not have a well understood and recognized meaning. Accordingly, the lack of a dictionary definition is further indication that the phrase INTELLIGENT NETWORK INTERFACE is at most suggestive of transmitters, receivers, electronic boards and microwave boards used for providing digital subscriber lines, but not [merely] descriptive of these goods.

The Examining Attorney, on the other hand, maintains that, based upon applicant's broad identification of its goods, the goods "may all contain microprocessors" and, as such, "the goods have processing capability and[,] therefore, ... are intelligent. Inasmuch as applicant's "intelligent" goods are

for use in a network interface as part of providing digital subscriber lines, the Examining Attorney concludes that the term "INTELLIGENT NETWORK INTERFACE merely describes the purpose or use of the goods." Of record in support of the refusal to register is a definition from The Computer Glossary (8th ed. 1998) at 207, which lists "intelligence" as meaning "[p]rocessing capability. Every computer is intelligent!"[3] In addition, The American Heritage Dictionary of the English Language (3rd ed. 1992) defines "intelligent" in relevant part as "**5.** *Computer Science.* Having certain data storage and processing capabilities: *an intelligent terminal; intelligent peripherals.*" The same dictionary, in pertinent part, sets forth "network" as **4. a.** A group or system of electronic components and connecting circuitry designed to function in a specific manner. **b.** *Computer Science.* A system of computers interconnected by telephone wires or other means in order to share information" and lists "interface" as "**3.** *Computer Science.* The point of interaction or communication between a

[3] Such dictionary also lists such terms as: "intelligent controller," which is defined as "[a] peripheral control unit that uses a built-in microprocessor for controlling its operation"; "intelligent hub," which is set forth as "[a] central connecting device in a network that performs a variety of processing functions such as network management, bridging, routing and switching"; "intelligent modem," which is stated to mean "[a] modem that responds to commands and can accept new instructions during online transmission"; and "intelligent terminal," which is defined as "[a] terminal with built-in processing capability, but no local disk or tape storage. It may use a general-purpose CPU

computer and any other entity, such as a printer or human operator."

Contending, furthermore, that "the phrase 'intelligent network interface' is commonly used in the industry," the Examining Attorney also notes in support of his position that the record contains numerous excerpts, of which the following are representative, showing use of the phrase "INTELLIGENT NETWORK INTERFACE" which were retrieved from a search of such phrase in the "NEXIS" database (**emphasis added**):

> "The Teleperm XP control system includes modular controllers and **intelligent network interfaces**. It offers functions for data acquisition and signal conditioning ...." -- Modern Power System, January 31, 2000;
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> "With the **intelligent network interface**, subscribers can use an Internet browser to change the parameters of their [wireless] service." -- Telephony, April 26, 1999;
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> "[ARM] entered into a strategic alliance with networking giant 3Com Corp. ... that will see the ARM9 32-bit RISC processor core providing the smarts in a future range of **intelligent network interface** cards from 3Com.
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> ....
>
> Under terms of the alliance, 3Com has designed a network controller known as the 3XP around the ARM9 core, and will use it to power a forthcoming range of **intelligent network interface** cards (NICs) due to be announced in the first half of this year." -

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or may have specialized circuitry as part of a distributed intelligence system."

- Electronic Engineering Times, March 1, 1999;

"Fast IP allows **intelligent network-interface** cards to handle some switching and routing decisions at the desktop level ...." -- Internet World, February 3, 1997;

"Company officials say they are concentrating on developing an **intelligent network interface** that would be attached to a set-top box, enabling it to interact with any kind of video transmission system ...." -- Telephony, June 10, 1996;

"This intelligent device emulates the venerable Ethernet cable. You still have the **intelligent network interface** cards in your workstation, sending the Ethernet packets as if you were still on that single cable." -- HP Professional, May 1993;

"AT&T's Advanced **Intelligent Network interfaces** could serve as gateways either to standalone devices such as voice mail or to databases that will assemble and/or manipulate information." -- Business Communications Review, May 1991 (article headlined in part: "Local competition - let the games begin! Local telephone service");

"With the new **intelligent network interface**, DEC service developers will be able to more easily connect to intelligent networks ...." -- PC Week, March 15, 1988;

"TelLAN runs on existing telephone wire without affecting voice traffic, the company said. **Intelligent network interface** units link devices to the net." -- Network World, March 23, 1987; and

"Ungermann-Bass, Inc. has announced the Net/One Personal Connection, an **intelligent network interface** unit (NIU) which is compatible with Xerox Corp.'s Ethernet local

> area network and IBM's Systems Network Architecture (SNA)." -- Computerworld, October 10, 1983.

Because the term "INTELLIGENT NETWORK INTERFACE" describes any network interface which is intelligent, that is, has processing capability, the Examining Attorney insists that a function or use of applicant's electronic components, which are used in communication systems that provide digital subscriber lines, is merely described by such term and that the refusal to register is therefore proper.

In the present case, we concur with the Examining Attorney that, when used on or in connection with applicant's "electronic components; namely audio and video transmitters and receivers, electronic circuit boards and microwave circuit boards, all used in communication systems that provide digital subscriber lines," the term "INTELLIGENT NETWORK INTERFACE" immediately describes, without conjecture or speculation, a significant purpose or use of such goods, namely, that they collectively function to provide an intelligent network interface in digital subscriber line communications systems. Contrary to applicant's principal contention, as reiterated in its reply brief, that such term "does not have a readily understood meaning either in popular or technical usage context," the "NEXIS" excerpts plainly demonstrate, and the dictionary definitions confirm that the term "INTELLIGENT

NETWORK INTERFACE" is used to designate any network interface, including those utilized in communications systems, which is intelligent in the sense that it has processing capability.

Applicant, as noted previously, has admitted that its goods "have some processing capability, wherein an electronic signal having an initial form is processed into another form," and that such goods "do indeed interface with ... communications systems." Clearly, to the engineers, network designers and managers of digital subscriber line communications systems who would constitute the primary customers for applicant's goods, there is nothing in the term "INTELLIGENT NETWORK INTERFACE" which, in the context of applicant's audio and video transmitters and receivers, electronic circuit boards and microwave circuit boards for use in communication systems that provide digital subscriber lines, would be ambiguous, incongruous or susceptible to any other plausible meaning. Accordingly, because such term conveys forthwith a significant purpose or use of applicant's electronic components, it is merely descriptive thereof within the meaning of the statute. See, e.g., In re Analog Devices Inc., 6 USPQ2d 1808 (TTAB 1988), aff'd in op. not for pub., 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) [term "ANALOG DEVICES" held merely descriptive of, and in fact found to be a generic name for a category of, various electronic data communications components, including

"computer interface products, namely, realtime interfaces and data exchangers, serial transmittal card/modules, serial receiver card/modules and serial multiplier card/modules"].

Decision: The refusal under Section 2(e)(1) is affirmed.